SERVED: November 17, 1994

NTSB Order No. EA-4278

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of November, 1994

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. JOEL B. STANCIL, Respondent.	)	Docket SE-12412

ORDER DENYING RECONSIDERATION

Respondent seeks reconsideration of our order, NTSB Order EA-4225, served August 5, 1994. In that order, we affirmed an initial decision imposing a 60-day suspension on respondent's commercial pilot certificate for violations of 14 C.F.R. 91.13 and 91.119(b). The Administrator has replied in opposition. We deny the petition.

Respondent was charged with flying too low on numerous commuting flights between his home and work. On petition, he argues that in our prior decision we erred in our analysis of whether his flights met the exception contained in § 91.119(b). That rule provides that flights over congested areas[1] must be at

[1]There is no dispute that the cited flights were over such areas.

altitudes of at least 1000 feet, unless lower flight is necessary for takeoff or landing. Respondent alleges that we relied on the testimony of Mr. Bauer, who was not qualified as an expert witness, to find that, 5 miles out from the airport, it was not necessary for landing that respondent fly below 1000 feet.

This claim is incorrect. Mr. Bauer's testimony was used only to establish respondent's altitude in various flights in the vicinity of Mr. Bauer's house. As the Administrator indicates, respondent ignores our discussion, NTSB Order EA-4225 at 4, which relies on respondent's own testimony that he would expect to be at 1000 feet 5 miles out and would not have started to descend at that point. A landing and a takeoff are parts of every flight and it is facile to argue, as respondent does, that he should have the benefit of the rule's exception because he was either taking off or landing during all flights. We continue to think it fairly obvious (id.) that respondent did not need to be below 1000 feet to land a single-engine Cessna 172 at an airport 5 miles away, and respondent did not offer any facts to the contrary.[2]

Respondent also argues that weather in the form of ceilings lower than 1000 feet required his low flight to operate clear of clouds. However, weather is not an exception to the rule. If respondent could not comply with § 91.119(b) due to low clouds, he should not have flown VFR[3] or should not have flown at all. It is not an excuse that one rule was violated to satisfy another.[4]

Finally, respondent argues that we erred in concluding that his transponder was not operating correctly on the April 25, 1991 flight. With regard to this flight, the Administrator offered the eyewitness testimony of two police officers who followed respondent by helicopter. They testified that respondent had flown at altitudes of no greater than 700 feet. Respondent replied that his transponder, which was new, read 2100 feet, and such an altitude was read on radar by an air traffic controller.

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[2]We thus reject respondent's claim that the rule is vague. And, to the extent he is making a broader Constitutional claim, it is not cognizable here. Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972); Administrator v. Rochna, NTSB Order EA-3184 (1990), affd Rochna v. NTSB, 929 F.2d 13 (1st Cir. 1991).

[3]Visual flight rules.

[4]To the extent that the above arguments were not raised on appeal, we also note that the Administrator correctly replies that respondent may not raise on petition matters he did not raise on appeal.

In our decision on appeal, we explained why we declined to base a decision on this evidence in the face of contrary police testimony, and we will not repeat those explanations, explanations respondent has offered no convincing or new reason to ignore. Furthermore, it was not established that the controller's reading occurred at the same time the police were tracking the aircraft. In any case, and also as we previously explained, ignoring this one incident (of eight cited in the amended complaint) would not warrant a reduction in the 60-day suspension.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's petition is denied; and

2. The 60-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.[5]

HALL, Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above order.

[5]For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).